IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Bail Appl..No. 5739 of 2007()

CRIME NO. 187/07 OF CHEVAYOOR POLICE STATION

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PETITIONER/ACCUSED NO.2

SUJATHA S.K., D/O. KRISHNA PILLAI,
AGED 38 YEARS, ROADARIKATHU PUTHEN VEEDU,
KOONANVENGA P.O., NEDUMANGADU TALUK,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT

STATE OF KERALA, THROUGH THE
SUB INSPECTOR OF POLICE, CHEVAYOOR POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/10/2007, ALONG WITH BA NO. 5743 OF 2007 AND CONNECTED CASE, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.Nos. 5739, 5743, 5744 &
5745 of 2007

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Dated this the 3rd day of October, 2007

O R D E R

The petitioners are spouses. The wife seeks anticipatory bail in two crimes. The husband seeks regular bail in those two crimes. The crimes are registered, one under the caption 'woman missing', later altered to Section 366 I.P.C., and the other under Sections 366 and 376 r/w. 34 I.P.C.

2. One girl, aged about 19 years, was being kept at the After care Home at Silver Hills, Calicut, she having been, allegedly, the victim of a sexual offence earlier. The petitioners - spouses - are said to be distantly related to the girl. The petitioners allegedly went to the said After care home and offered to take that hapless girl along with them to their native place on the promise that the grandmother of the girl can be shown to her. Instead of providing support and solace to the girl, the petitioners, acting in collusion, had offered the girl for sexual intercourse/prostitution to many other persons. They had collected amounts from such persons. She was granted leave from the After care home for a period of one month. They took her and

misused her during this period and ultimately brought her back to the After care home. The girl was allegedly compelled under duress to agree for such intercourse. Even when she came back to the After care home, she did not make any complaint. Later, the said girl, along with another, is alleged to have escaped from the After care home and returned to the fold of the petitioners. It was then that the F.I.R. under the caption 'woman missing' was registered. When the victim girl was traced ultimately she was brought back to the After care home. She was examined by the doctor. It is at that stage that she revealed the allegation that the petitioners had compelled her under duress to have sexual intercourse with various persons. She could not/did not raise any objections for such sexual intercourse because of her debilitating circumstances. The petitioner/husband was arrested on 1.8.2007. His wife is apprehending imminent arrest. She has not been arrested so far.

3. The learned counsel for the petitioners submits that the petitioners are absolutely innocent of the allegations levelled against them. Even accepting all the allegations, the inference is irresistible in the facts and circumstances of these cases that the alleged victim had consented to sexual intercourse and had not raised any objection. Her conduct at the time when

she entered into sexual relationship, her conduct when she returned to the After care home and her conduct of escaping from the After care home later all show that she was a willing/consenting party to the sexual intercourse. False and fanciful allegations are raised against the petitioners and in these circumstances it is prayed that the wife may be granted anticipatory bail and the husband may be enlarged on bail, submits the counsel.

4. The learned Prosecutor opposes the application. This court may not omit to note the depravity of the culpable conduct on the part of the petitioners. This is not a fit case where the wife/accused is entitled for anticipatory bail. The petitioner/husband in custody is not entitled to be enlarged on bail also at this stage, as the co-accused has not been apprehended and the investigation is not complete so far.

5. In the nature of the allegations and the contentions raised, the learned Prosecutor was requested to place the case diary for my perusal. I have perused the case diary.

6. Having considered all the relevant inputs, I do agree that there is merit in the opposition by the Prosecutor. This, I am convinced, is not a fit case where the extra ordinary equitable discretion under Section 438 Cr.P.C. can or ought to be invoked in favour of the petitioner/wife. I am

further satisfied, considering all the relevant inputs, that the petitioner/husband, who is continuing in custody from 1.8.2007, is not entitled to be enlarged on bail. In coming to this conclusion I have taken note of all the relevant inputs, including the nature and gravity of the allegations raised, the depravity of mind revealed from the allegations raised, stage of the investigation and all other relevant inputs. I am satisfied that these petitions do not deserve to be allowed now.

7. These petitions are dismissed. Needless to say, if the petitioner/wife appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously. I may further hasten to observe that the petitioner/husband shall be at liberty to move the court for bail again at a later stage of the investigation, not at any rate, prior to 17.10.2007. The Investigators shall, in the meantime, make every endeavour to complete the investigation.

(R. BASANT)
Judge

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